

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**KYLE AUBREY BELL,**

**Movant,**

**v.**

**UNITED STATES OF AMERICA,**

**Respondent.**

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**1:96-cr-127-WSD-JKL**

**1:16-cv-2367-WSD**

**ORDER**

This matter is before the Court on Magistrate Judge John K. Larkins III's Final Report and Recommendation [426],<sup>1</sup> recommending dismissal of Movant Kyle Aubrey Bell's ("Movant") Motion to Correct, Vacate, and/or Set-Aside Pursuant to Title 28 U.S.C. § 2255(H)(2) [422] ("Fourth Section 2255 Motion").

On July 13, 2001, Movant filed his first section 2255 motion [355], which the Court denied [357] on January 16, 2002, as untimely. On March 15, 2007, Movant filed his second section 2255 motion [376], which the Court denied [379] on October 31, 2007, because the motion was successive and untimely. On

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<sup>1</sup> Citations to the record, in this Order, refer to case number 1:96-cr-127-WSD-JKL.

February 15, 2013, Movant filed his third section 2255 motion [416], which the Court denied [417] on April 11, 2013, for lack of jurisdiction because Movant had not obtained authorization to file a successive section 2255 motion. On June 27, 2016, Movant, proceeding *pro se*, filed his Fourth Section 2255 Motion. On July 6, 2016, the United States Court of Appeals for the Eleventh Circuit (“Eleventh Circuit”) denied [424] Movant’s application for leave to file a second or successive § 2255 motion.

On July 13, 2016, the Magistrate Judge issued his R&R, recommending that Movant’s Fourth Section 2255 Motion be dismissed for lack of jurisdiction. Movant has not filed objections to the R&R and the Court thus reviews it for plain error. See United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983), cert. denied, 464 U.S. 1050 (1984).

A movant may not file a second or successive section 2255 motion without authorization from the Eleventh Circuit. See 28 U.S.C. § 2255(h). Without this authorization, the district court “lacks jurisdiction to consider a second or successive motion.” Farris v. United States, 333 F.3d 1211, 1216 (11th Cir. 2003). The Magistrate Judge found that, because the Eleventh Circuit denied Movant’s application for leave to file a successive section 2255 motion, Movant’s Fourth Section 2255 Motion should be dismissed for lack of jurisdiction. The Court finds

no plain error in this determination.


For the foregoing reasons,

**IT IS HEREBY ORDERED** that Magistrate Judge John K. Larkins III's Final Report and Recommendation [426] is **ADOPTED**.

**IT IS FURTHER ORDERED** that Movant Kyle Aubrey Bell's Motion to Correct, Vacate, and/or Set-Aside Pursuant to Title 28 U.S.C. § 2255(H)(2) [422] is **DISMISSED**.

**IT IS FURTHER ORDERED** that civil action number 1:16-cv-2367-WSD is **DISMISSED**.

**SO ORDERED** this 22nd day of September, 2016.

  
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WILLIAM S. DUFFEY, JR.  
UNITED STATES DISTRICT JUDGE